

The Second International Conference on Arab-Malaysian
Islamic Global Business and Entrepreneurship (2nd AMGBE)
on 20 – 24 March 2010

TITLE:

**THE ISSUE OF SEQUENCE AND PRE SIGNING IN CONTRACT EXECUTION
BETWEEN SHARI'AH VIEW AND CURRENT PRACTICE¹**

By:
Asmadi Mohamed Naim, *Phd*

¹ This paper is part of the report which was prepared by the writer to fulfill the partial requirement to be awarded Chartered Islamic Finance Professional (CIFP) from INCEIF. The writer holds a post as Associate Professor in Islamic Finance at College of Business, Universiti Utara Malaysia.

ABSTRACT

Pre signing of all the transactional documents in one sitting by the customer is among the issue that is questionable as it does not follow the sequence in Shari'ah concept of 'offer and acceptance'. As 'offer and acceptance' or 'ijab' and 'qabul' i.e. sighth in popular juristic view is an absolute and executed after the possession of the contracted item, pre signing in normal circumstance has been seen as promise from one party to purchase or to sell. Hence, the question arises from the practice is does the promise can be considered as 'offer' or 'acceptance', or not? Any compliant issue in contract execution will affect the validity of the contract. Therefore, the study aims to discover few objectives such as Shari'ah view on sequence of contract execution in Islamic banking products; and Islamic banks' practices in executing contract in vehicle financing, house financing and personal financing. The paper discloses Islamic views on contract execution and how Islamic banks practices contract execution with customers. The paper suggests that the offer and acceptance should be done in proper manner as described by Islamic jurists and technology devices and communication technology should be used to overcome pre-signing needs.

1.0 Introduction

As Islamic banking is moving towards maturity phase, there are many calls from various quarters that Islamic banking must move towards fulfilling the objective of Shariah (*maqasid*) instead of just fulfilling the contractual element of the transaction. Although the Shariah Committee (SC) is a compulsory element in Islamic financial institutions, there are still a lot of confusions in term of how the institutions have harmonized Shariah pronouncements with their practices. Hence, before moving towards absorbing '*maqasidic* approach' in Islamic finance, there are continuously loop holes in the institutions in implementation ruling, standards and pronouncements of Shariah committee.

Perhaps there were individual pronouncements from each bank SC to lenient the way in implementing the standards. Hence, there is still a need to examine the accuracy of Islamic banking practices and among the issue is the way how Islamic banks executed the contracts.

Pre signing of all the transaction documents is among the issue that was questionable as it does not follow the sequence in 'offer and acceptance'. As 'offer and acceptance' or 'ijab' and 'qabul' i.e. *sighth* in popular juristic view are absolute and executed after

the possession of the contracted item, pre signing in normal circumstance has been seen as promise from one party to purchase or to sell, and the question is does the promise can be considered as 'offer' or 'acceptance', or not? Therefore, thorough study should be performed to analyse juristic views on the matter and how it has been practiced by Islamic banks in Malaysia. Some solution may be provided at the end of this discussion.

The study aims to discover the following objectives:

- i. *Shari'ah* view on the form of contract (*sighah*) in executing the contract
- ii. *Shari'ah* view on the transaction by action (*mu'atah*) and subject matter of the contract
- iii. Islamic banking practices in executing contract in vehicle financing, house financing and personal financing.

This study is very significant to discover the compliant of Islamic banking practices and definitely will contribute in ensuring adequate Islamic banking practices among the players of the system. This study is also significant to suggest solution for the bank which might not able to implement the accurate way in executing the contract. Furthermore, the study will help the scholars, practitioners and students to understand to issue deeper as they will face this issue in their everyday practices.

The paper applies qualitative research method comprises of document analysis and interviews with the players. In the initial stage of the study, it will examine the details of *Shariah* tenets on the contract in classical and contemporary books especially in the issue of *sighah*. Subsequent to that, it will analyse the implementation of the contract execution in the Islamic banks, in which the study will examine how the contract has been executed in Islamic bank.

2.0 Limitation of Study

There are many Islamic banks in Malaysia either local ownership banks or international ownership banks. At the moment there are more than 17 Islamic banks in Malaysia as most of them are subsidiary full fledged Islamic banks as follows:

1. Affin Islamic Bank Berhad

2. Al Rajhi Banking & Investment Corporation (Malaysia) Berhad.
3. AmIslamic Bank Berhad.
4. Asian Finance Bank Berhad.
5. Bank Islam Malaysia Berhad.
6. Bank Muamalat Malaysia Berhad.
7. CIMB Islamic Bank Berhad
8. EONCAP Islamic Bank Berhad.
9. Hong Leong Islamic Bank Berhad.
10. Kuwait Finance House (Malaysia) Berhad.
11. RHB Islamic Bank Berhad.
12. Alliance Islamic Malaysia Bank Berhad.
13. Maybank Islamic Berhad.
14. HSBC Amanah Malaysia Berhad.
15. OCBC Al-Amin Bank Berhad.
16. Public Islamic Bank Berhad.
17. Standard Chartered Saadiq Berhad.

The newly established International Islamic bank under Malaysia International Islamic Financial Centre (MIFC) is Unicorn International Islamic Bank Malaysia Berhad.

Many quarters are waiting the establishment of two new International Islamic banks as the Government of Malaysia in its 2010 budget tabling at Parliament of Malaysia in October 2009 has made an announcement that it will grant two mega Islamic bank licenses to any investors with a condition that the paid up capital must be at RM5 billion.

Notwithstanding, as the duration and the reality of limited cooperation from each bank due to various reasons, the study will only investigate a few Islamic banks where researcher can easily obtain the information on the matter.

3.0 Issues on the form of contract execution (*sighah al-ta'aqud*)

There are few issues which relate to the form of contract in executing the transaction as follows:

3.1 Details on form of contract used in contract execution

Almost all scholars agreed that the presence of contract and its completion and validity are dependant on the presence of verbal or written expression (which follows certain wording rules) from both parties in order to show their consent to uphold certain obligation between them. Normally, legalists described it as 'expression of intention' (*al-ta'bir 'an al-iradah*).

The expression in the contract must follow the rules which are approved by the Islamic law. Hence, according to the Hanafis, the approved contract expression in sale purchase is 'the sale is valid by using any wording which shows 'consent' to exchange the assets as recognized by society custom and their practices.²

Then, the Hanafi scholars describe that: "the sale is valid by using 'past tense' form of wording, such as I sold, or I purchased; or using 'present tense' form with the intention to sell or purchase, such as 'I sell', or I buy'.³ Hence, both parties could not use 'future tense form' in their contract expression because the usage of future words such as 'will' is contradicted with the objective and intention of contract which is to be executed at that time.

Therefore, al-Zuhaily concludes that '*al-bay' ghair al-munjiz*' i.e. the sale purchase which attached with condition, or extended the contract execution to future, as a *fasid* contract as accordance to the Hanafis, and as a void contract as accordance to majority scholars.⁴

The Hanafis have rejected also the expression which used 'request form' such as 'sell to me' or 'buy from me' and consider it as a void contract. Hence, the 'expression' is

² Al-Zuhaily,, Wahbah (1989). *Al-Fiqh al-Islami wa Adillatuhu*. Beirut: Dar al-Fikr. vol.4, p348.

³ Al-Kasani, Abu Bakar Mas'ud (2000). *Badai' al-Sanai'*. Beirut: Dar Ihya' al-Turath al-'Arabi. vol.4, p318-319.

⁴ Al-Zuhaily (1989), vol4, p503.

not enough unless the counter party answers the request by saying: I sell, or I buy.⁵ However, the Malikis, Shafiis and Hanbalis incline towards the validation of the contract which uses 'request form' with the condition that it only can be considered as valid after the counter party discloses his or her consent.

3.2 Issue of sale and purchase through action (cash and carry or *mu'atah*)

Disagreements existed among the jurists regarding contracts which were transacted without verbal expression but were completed merely by physical exchange of contracted items i.e. paying the price and taking the good.

The Malikis, the Hanbalis and the Ibadi jurists held the view that the contract can be entered (*in 'iqad*) simply by physical exchange of contracted items. This view was also shared by a group of Shafie school of thought; among them including Imam Ghazali and al-Nawawi.⁶

The jurists of Hanafi only permitted the transaction of *mu'atah* for meaningless items.⁷

On the other hand, the Shafies', in their popular view and other views of the Ibadis', believe that a contract by physical exchange (without verbal expression) is void.⁸

However, after analysing the evidences from the Holy Quran and the sunnah, it showed that the evidences explicitly explain the permissibility of 'muatah transaction' i.e. paying the price and taking the good transaction (i.e. without any verbal expression) either for cheap things or expensive items. Many Scholars such as al-Kasani, al-Nawawi and Ibnu Qudamah had chosen this view and they stressed that the custom of the society (al-'urf) should determine whether to accept muatah as a sale or purchase for everything or for certain items only.⁹

⁵ Ibid, vol.4, p348.

⁶ Ibn al-Humam, al-Kamal (n.d.). *Sharh Fath al-Qadir*. Beirut: Dar al-Fikr. Vol.6, p252, al-Khatib al-Sharbini (n.d.). vol.2, p3-5.

⁷ Ibn al-Humam (n.d.). vol.6, p252.

⁸ Al-Khatib al-Sharbini (n.d.). vol.2, p3-5, Itfish (n.d.), vol.8, p211.

⁹ Al-Kasani (2000), vol.4, p319-320. al-Nawawi (n.d.). *al-Majmu'*. Beirut: Dar al-Fikr, vol.9, p173, Ibn Qudamah (n.d.), vol.4, p4-5.

The textual evidences support that stance as the verse: {إلا أن تكون تجارة عن تراض منكم} which means: "except that it be trading by your mutual consent" supports clearly that the business is to exchange something with someone against a reward without any verbal expression. Hence, it explains permissibility of '*muatah*' as the exchange of the item with the price shows the consent between both parties.¹⁰

Furthermore, if verbal expression to buy and purchase have been practiced widely in the time of Prophet Muhammad SAW and his companions, there must be clear evidences which showed those practices as sale and purchase were something frequently practiced. However, no explicit evidence so far has been found to show that the companions used widely verbal expression like what had been stated in *fiqh* book.¹¹

3.3 Place of contract (*mahl al'aqd*)

Mahl al-aqd or *al-ma'qud 'alaihi* is a place of contract. It is where the contract is assigned to or targeted to as the rules and the consequences of contract are appeared in it. Thus, the subject matter is the place of contract and it can be a valuable tangible thing such as goods, pledge thing or gift, or it can be a benefit or an usufruct such as usufruct of leased asset, or service from hired worker.

Normally, Islamic jurists determined at least four main conditions of the subject matter as follows:¹²

i. It must be exist at the time of contract

It is not valid to transact something which is not exist such as selling the plant before it existence as there is possibility that it does not rise or sow.

ii. The subject matter must be something which is legitimate.

The contracted item must be something which is recognised by the Islamic law as legitimate asset which can be possessed (*mal mamluk mutaqawwim*). If it is not

¹⁰ Al-Kasani, vol4, p319-320.

¹¹ Ibn Qudamah, vol.4, p4-5.

¹² Al-Zuhaily (1989), vol.4, p357-358.

legitimate, the contract is void. Hence, selling human body or blood, or pledging them, or donating it under waqaf, or putting it in will is void.

The contract is also void if the subject matter is something which is for all people such as fish in a pond or river; or bird in the sky; or grass in a field, unless someone has used some effort to collect and separate it in one place.

iii. The subject matter must be able to be delivered

The ability to deliver at the time of transaction is an integral condition in contract. The contract is not completed in a situation where the owner is in a situation does not able to deliver the subject matter although the ownership is belong to the owner. Hence, the contract is void.

iv. The subject matter must be something which can be determined and be known by both parties.

The jurists also stipulated that the subject matter must be acknowledged by both parties and such acknowledgement should be able to avoid any conflict among them. It is to abide the commandment of textual evidence i.e. Sunnah which prohibiting *bay' al-gharar* (uncertain subject matter) or *bay' al-majhul* (not known subject matter).

4.0 Pronouncements on pre signing of the Contractual Documents.

Shariah committee in Islamic banks plays an integral role in issuing guidelines, pronouncements and parameters to guide the industry. Above those committees are Shariah Advisory Councils (SAC) of regulators such as Bank Negara Malaysia, Securities Commission of Malaysia and Accounting and Auditing of Islamic Financial Institutions (AAOIFI).

To address the issue of pre-signing, the study has examined the pronouncements of various Shariah committees, and finally it seems that only two committees elaborate clearly on the issue. Following is the detail of the pronouncements:

4.1 Accounting and Auditing of Islamic Financial Institutions (AAOIFI)

AAOIFI in its Shariah Standard stated clearly on the need of signing the document after the completion of first contract as follows:

i. Murabah for purchase orderer (Murabahah lil Amir bi shira)

*3/1/1 The institution is forbade (haram) from selling any item (to third party) under murabahah before having acquired the item. Hence, it is not valid for the institution **to sign** Murabahah contract with the orderer (customer) before concluding with the first seller (i.e. supplier) to buy the item (murabahah item), and actual possession or constructive possession through giving control over the item or presenting documents that represents possession (see section 3/2/1-3/2/4). Likewise, the murabahah is considered as void if the first contract (i.e. between institution and supplier) is void, as in this case the contract does not give full ownership to the institution.¹³*

The standard explicitly stated that the institution is prohibited **to sign** Murabahah contract with the orderer (customer) before concluding the contract with the first seller (i.e. supplier) to buy the item.

ii. Ijarah

Under Ijarah standards, the book stated that:

3/1 For the validity of an Ijarah contract concerning a specified asset, the lease contract should be preceded by complete acquisition contract of either the asset to be leased or the usufruct of the asset.¹⁴

The standard stresses on the complete acquisition contract before executing lease contract by both parties.

4.2 Dalal Barakah

In Fatawa Book of Dalal Barakah, the issue of pre signing was not described directly but it was mentioned indirectly when the pronouncement determined the time where the second contract can be transacted as quoted below:

¹³ AAOIFI (2008). *Al-Ma'ayir al-Shar'iyyah 2008- 1429H*. Manama: AAOIFI. ms. 111-112.

(Researcher has made its own translation as the English version of the standard is slight different from the Arabic version. Arabic version supersedes English version in the event of conflict in translation).

¹⁴ AAOIFI, ms 135.

i. Executing murabahah contract at the day of issuing Freight Guarantee Letter

2/48 *It is permissible to execute murabahah contract with the customer after the arrival of the insurance policy of the freight which disclosed the ownership of the bank to the asset, although the bank is yet to pay the producer.*¹⁵

The pronouncement shows that both parties can only execute the murabahah contract after the bank obtains the ownership of the murabahah asset.

5.0 Practices in Islamic banks in Malaysia

The study applies ethnography interview in this study. Ethnography is a type of qualitative research which uses a combination of observation and participation. Normally it focuses on what are the activities in order to understand the complex behavior without strategy that limits the inquiry. It is not necessarily a structured interview.¹⁶

This type of study has few features such as a strong emphasis on exploring, or it has a tendency to work primarily with 'unstructured' data. It also beneficial in investigating a small number of cases and it could analyses verbal descriptions and explanations.¹⁷

In order to investigate the practices of the Islamic banks in Malaysia, the researcher had participated in the practice personally through participating as a customer and guarantor for many banks. The researcher also had observed the practices through informal conversation with bankers and Shariah officers. Hence, to further examine their practices beside those observations and the participations by the researcher, the study conducted two types of interview to the bankers.¹⁸

First, the researcher conducted telephone interview with the banker to know in general their practices officially. Secondly, the researcher has also distributed the questionnaire in order to know their practices in detail. The study did follow the ethnographic interview method by assisting customer towards the answer to suggest the reasons behind the practices as ethnography interview means that the series of

¹⁵ *Al-Fatawa al-Shar'iyah Li Majmu'ah al-Barakah al-Masrafiyyah* (2007), hal.76.

¹⁶ http://hcc.cc.gatech.edu/documents/156_Fisk_overview_qualitative_research.pdf

¹⁷ http://hcc.cc.gatech.edu/documents/156_Fisk_overview_qualitative_research.pdf

¹⁸ http://hcc.cc.gatech.edu/documents/156_Fisk_overview_qualitative_research.pdf

friendly conversations where the interviewer slowly introduces new elements to assist participants to respond as participants. Hence this study has chosen a closed, fixed-response interview where all interviewees are asked the same questions and asked to choose answers from among the same set of alternatives.¹⁹

Following are the results from the phone call interview and the questionnaire:

5.1 Practices by the Islamic banks in general on pre-signing.

As to understand the practice of Islamic banks, the study had made telephone interviews. The respondents is purposively selected and normally those who are working in financing or product department of Islamic bank. The questions were same although the wording may not be the same as the way of conversation may differ from one person to another. In many circumstances, researcher or research assistant introduced himself and informed that the information will be cited in the study however the bank will not be named in the report.

Market Survey of Pre-sign (Financing contract)

No	Institution	Description	Pre-signing	Pre-signing	Pre-signing
1	Bank A	Written agreement followed by verbal contract	✓	✓	
2	Bank B	Written agreement	✓	✓	✓
3	Bank C		✓ Written agreement followed by verbal contract	✓ Written agreement	✓ Written agreement
4	Bank D		✓ Written		

¹⁹ <http://www.public.asu.edu/~kroel/www500/Interview%20Fri.pdf>

			agreement followed by verbal contract		
5	Bank E		✓ Written agreement followed by verbal contract	✓	X
7	Bank F	Written agreement	✓	✓	✓
11	Bank G		✓		

The result shows that some banks are using pre-signing in their contract executions. In contracts there are banks who are using pre-signing as formality for the contract execution but the actual contract is through verbal contract whether via face to face verbal expression or recorded telephone call.

5.2 The detail of Pre-signing and reason behind the practices

This study had distributed the questionnaire to the bankers through the Association of Islamic Bank Malaysia (AIBIM) and then the Association had sent them to the respective individuals in Islamic banks. As to increase the probability to collect back the questionnaires, some of them had been distributed by research assistant directly to the bankers. Although the information given is straightly confidential, not all bankers were willing to answer the questions. However, the feedbacks that the study received were good enough to give valid and relevant information to the study, as qualitative research method does not stipulate certain ratio of questionnaire to be answered by respondents. Following are the responses from the bankers.

1. With regards to the question on how the bank practice pre-signing, the following are the responses from the Islamic banks:
 - i. Customer pre signs the document when applying for a financing facility from the bank.
 - ii. Customer pre signs all documents for formality only. The actual contract execution will be made through recorded telephone conversation.

iii. For house financing, customer will sign all documents in the lawyer office.

2. With regards to the question whether Shariah Committee (SC) of the bank approved pre signing of such documents, many Islamic banks said no, but the practice had been informed to the SC. Hence, no official decision from the SC. In contract, few banks had tabled the issue to their SC, or at least they had disclosed the practice to the SC.

3. Under the question: Does the bank allow pre signing in these following products, most of the bank which allow pre-signing, allow the pre-signing in these following products:

- a. House financing
- b. Personal financing
- c. Car financing
- d. Trade financing

Few banks, do not allow pre-signing in personal financing.

4. With regards to the question: "Does the bank ensure that its authorized person signs the documents in sequence?", few banks gave a response that they are not necessarily follow the sequence when signing the documents. The others said that they observe the sequence.

5. Under the question on the sequence that the bank should follow in signing the documents for BBA and Murabahah. All respondents agree that the sequence will be Sale and Purchase Agreement (S&P), Property Purchase Agreement (PPA) and Property Sale Agreement (PSA).

6. With regards to the sequence that the bank should follow for AITAB, almost all banks agree that the sequence for AITAB should be S&P: Asset Purchase Agreement (A&P), Ijarah Agreement and Asset Sale Agreement (ASA).

One bank which considered signing as formality only has depended totally on Hire Purchase Agreement without any other agreement.

7. With regards to the question on the reasons why Islamic banks practice pre-signing, following are their responses:

- a. Islamic bank must be as efficient as conventional bank to expedite the signing process.
- b. Many sittings to sign the documents will burden customer.

6.0 Discussion and Finding

Pre-signing as mentioned before means the event where the customer signs series of Shariah transactional documents (including legal documents) at a single sitting and thereafter the bank shall sign the same documents at a separate sitting on a later date.

For example, in cases of BBA, customer shall pre-signs the Property Purchase Agreement (PPA) and Property Sale Agreement (PSA) at a single sitting at the documentation solicitor's office before the said documents is submitted to the bank to be executed by the authorized officer of the bank; and in ALTAB, customer pre-signs the PPA, Hire Purchase Agreement and the PSA at the dealer's office before the documents is submitted to the banks and authorized bank officer signs on behalf of bank.

By analyzing the process of signing, there are at least two interrelated issues arise from the practice as follows:

1. Does pre-signing falls under invalid offer & acceptance?
2. Does pre-signing falls under selling something which is not under contracted parties' ownership?

The signing of the document is made by customer either before the approval of financing, or after the approval. In both cases, customer is the only party who signs in single sitting and customer already knows the specification of the subject matter. The subject matter may be already existed or yet to exist. The authorized personnel of the bank will only sign the documents in sequence in his office on the later date after the customer signed all the documents at previous sitting.

Normally, the pre-signing occurs in four ways and the consequences that may raise from the practices are as in the table below:

	Situations in pre-signing practice	The Shariah implication
1.	During applying the financing i.e. before getting the approval of the financing, customer signs Asset Purchase Agreement (APA), Asset Sale Agreement (ASA) or Lease Agreement.	<p>i. The customer has given his 'ijab' to buy or to lease without any absolute intention as he does not know whether his application will be approved or not. 'Ijab' (offer) must come in absolute form (<i>mulzam</i>).</p> <p>ii. The '<i>ijab</i>' in second transaction was given in a situation where customer is not in the capacity to give 'ijab' as the ownership is not his.</p> <p>iii. The practices fell under selling which is not owned by the contracted parties (<i>al-bay' ma laisa indak</i>).</p> <p>iv. The practices fell under '<i>al-bay' ghair al-munjiz</i>' i.e. the sale purchase which extended the contract execution to future, which is a <i>fasid</i> contract according to the Hanafis, and and a void contract according to the majority of scholars.</p> <p>v. The practice is against the AAOIFI Shariah Standard and Dalal Bandah pronouncement.</p>
2.	After the approval, customer signs all document in single sitting and afterward in other sitting, the authorized personnel of the bank signs on behalf of the bank.	<p>i. The 'ijab' is given by the customer in second contract (i.e. ASA) in a situation where customer is not in the capacity to give 'ijab' as the ownership is not his.</p> <p>ii. The practices fell under selling which is not owned by the contracted parties (<i>al-bay' ma laisa indak</i>).</p> <p>iii. The practices fell under '<i>al-bay' ghair al-munjiz</i>' i.e. the sale purchase which extended the contract execution to future, which is a <i>fasid</i> contract according to the Hanafis, and and a void contract according to the majority of scholars.</p> <p>iv. The practice is against the AAOIFI</p>

		Shariah Standard and Datal Barakah pronouncement.
3.	The contract is transacted verbally in sequence and the documents are for formality only, but the documents must follow Shariah principles such as PPA document, PSA document and Islamic hire purchase document (lease document).	<p>i. The verbal contract is valid if the authorized personnel transacted on behalf of bank.</p> <p>ii. The legal document must follow Shariah principles as the court will refer to it in the event of dispute and litigation, together with verbal contract.</p> <p>iii. The practice of pre-signing is against the AAOIFI Shariah Standard and Datal Barakah pronouncement.</p> <p>iv. The AAOIFI Standard and Datal Barakah pronouncement have made legal documents as actual transactional documents. They did not use any verbal contract.</p>
4.	The contract is transacted verbally; hence the normal conventional documents can be used as the validity is depending totally on verbal transaction.	<p>i. The verbal contract is valid if the authorized personnel transacted on behalf of bank.</p> <p>ii. Both parties are careful towards any non compliant condition of normal conventional documents. Non compliant condition could not be implemented in litigation.</p> <p>iii. The AAOIFI Standard and Datal Barakah pronouncement have made legal documents as actual transactional documents. They did not recognize any Shariah compliant documents.</p>

Although the pre-signing seems to be an invalid contract practice, Shariah scholars must take into consideration the concerns of the Islamic banks on many issues as disclosed by them in the responses of the questionnaire. Amongst their concerns is the ability of Islamic bank to be an efficient bank as conventional bank did and able to expedite the signing process. Islamic banks should not impose so many signatures to sign the documents as it will burden customer and bankers.

7.0 Suggestion and conclusion

From the discussion above, the most appropriate and Shariah compliant way in contract execution is through few sittings between bank and customer. It is illogical for Islamic bank as a trade based bank, has to act similarly with lending based conventional banks in executing the contract. Therefore, bankers and customer in Islamic banks should communicate among them at many stages to ensure that the transactions were made accordingly.

For instance, in Murabahah contract, the bank has to ensure that it has completed his purchase from the supplier in order to enter murabahah contract with third party i.e. customer. Hence, the customer has to come to bank twice, firstly to accept the offer of financing, secondly to transact murabahah contract with the bank after the bank has purchased and constructively has possessed the asset. Alternatively, murabahah transaction between the bank and the customer can be concluded through latest communication ways such as email, sms, telephone call or web logging that can be created and managed through telephone and can be printed.

However, the third way of pre-signing as discussed in previous section is in accordance to the majority of scholars as it fulfilled the requirement in contract and ensured that the ownership has been transferred to the bank before entering the murabahah contract or lease contract with third party.

As stated in the table above, the third way is 'the contract is conducted verbally in sequence and the documents are for formality only, but the contract must follow Shariah principles such as PPA document, PSA document, bill of lading, purchase document (lease document).'

To improve the verbal contract via recorded telephone call, it is better to use current technology devices as mentioned before. Efforts should be made to create a viable system which can be used electronically to enable bank and customer to transact in sequence and can be printed as a main document to support the pre-signing of Islamic contract documents in the event of dispute among the parties.

References

- AAOIFI (2008). *Al-Ma'ayir al-Shar'iyyah 2008- 1429H*. Manama: AAOIFI.
- al-Amidi (n.d.). *al-Ihkam fi Usul al-Ahkam*. Beirut: Dar al-Ma'arif al-'Arabi.
- Dalal Barakah (2007) *Al-Fatawa al-Shar'iyyah Li Majmu'ah al-Farafa al-Masrafiyyah*.
- al-Dasuqi, Muhammad Arafah (n.d.). *Hashiah al-Dasuqi*. Qibla: Maktab al-Zahran.
- Ibn Qudamah, Abdullah Muhammad (n.d.). *al-Mughni*. Dar al-Ma'arif al-'Arabi.
- Ibn al-Humam, al-Kamal (n.d.). *Sharh Fath al-Qadir*. Beirut: Dar al-Fikr.
- Itfish, Muhammad Yusoff (n.d.). *Sharh Kitab al-Nail wa Sharh al-Milal*. Manama: Wuzarah al-Turath al-Qaumi.
- al-Kasani, Abu Bakar Mas'ud (2000). *Badai' al-Sana'i'*. Beirut: Dar al-Turath al-'Arabi.
- al-Murtadha, Ahmad Yahya (1947). *al-Bahr al-Zakhihar*. Sanaa: Dar al-Kutub al-Yamaniah.
- al-Nasafi, Abdullah Ahmad Mahmud (2000). *Tafsir al-Nasafi*. Beirut: al-Ma'rifat.
- al-Nawawi (n.d.). *al-Majmu'*. Beirut: Dar al-Fikr.
- al-Nawawi, Mahyuddin Sharaf (1991). *Raudhah al-Talibin*. Beirut: al-Mu'ayyin.
- Beirut: al-Maktab al-Islami.
- al-Qarafi (1994). *Al-Zakhirah*. Beirut: Dar al-Gharb al-Islami.
- al-Qurtubi, Muhammad Ahmad al-Ansari (1995). *Al-Jami' al-Ahkam al-Qur'an*. Beirut: Dar al-Fikr.
- al-Sais, Muhammad Ali. (n.d). *Tafsir Ayat al-Ihkam*. Cairo: al-Madani.
- al-San'ani, Ahmad Qasim al-'Anisi al-Yamani (1993). *Al-Tamim al-Ahkam al-Mazhab*. Sanaa: Dar al-Kutub al-Yamaniah.
- al-Sharbini al-Khatib (n.d.). *Mughni al-Muhajj*. Beirut: Dar al-Turath al-'Arabi.
- al-Shirazi, Ibrahim Ali Yusuf al-Fairuzabadi (1975). *Al-Mawdu'at*. Beirut: Dar al-Kutub al-'Ilmiyyah.
- al-Tusi, Muhammad al-Hasan (n.d.). *al-Khilaf*. Qum: Mat' al-Bayt al-'Ilmi.
- al-Zuhaily, Wahbah (1989). *Al-Fiqh al-Islami wa Adillatuh*. Beirut: Dar al-Fikr.
- al-Zuhayli, Wahbah (1987a). *Usul al-Fiqh al-Islami*. Beirut: Dar al-Fikr.
- http://hcc.cc.gatech.edu/documents/156_Fisk_overview_01012006.pdf
- <http://www.public.asu.edu/~kroel/www500/Interview%20with%20Dr%20Wahbah%20Zuhayli.pdf>